

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

THURSDAY, THE 9TH AUGUST 2007 / 18TH SRAVANA 1929

WP(C).No. 15125 of 2007(A)

PETITIONER:

**C. THOMAS,
ELUVUNGAL HOUSE, VAYYATTU, NALLANAD,
VENJARAMOODU P.O., THIRUVANANTHAPURAM DIST.**

**BY ADV. SRI.PIRAPPANCODE V.SREEDHARAN NAIR
SRI.PIRAPPANCODE V.S.SUDHIR**

RESPONDENTS:

- 1. KERALA FINANCIAL CORPORATION,
VELLAYAMBALAM, THIRUVANANTHAPURAM-695 033,
REPRESENTED BY ITS MANAGING DIRECTOR.**
- 2. THE CHIEF MANAGER,
KERALA FINANCIAL CORPORATION, VELLAYAMBALAM,
THIRUVANANTHAPURAM.**
- 3. DEPUTY TAHSILDAR,
REVENUE RECOVERY, KERALA FINANCIAL CORPORATION,
VELLAYAMBALAM, THIRUVANANTHAPURAM.**
- 4. SRI.P.P. POULOSE,
MANAGING PARTNER, M/S.PALLANNATTIL CONSTRUCTION CO.
(ENGINEERS AND CONTRACTORS), REVIEW BUILDINGS,
KURISADI JN., NALANCHIRA, THIRUVANANTHAPURAM.**

ADDL.R5, R6, R7 IMPEADED.

- 5. SRI.K.SASIDHARAN, S/O.KRISHNAN,
T.C.19/170, VATTAVILA, THIRUVANANTHAPURAM.**

W.P.(C) NO.15125/2007

- 6. SMT.SANTA LATAM T.C.15/298, SAIFULYA,
ALTHARA NAGAR, VELLAYAMBALAM,
THIRUVANANTHAPURAM.**
- 7. SMT.VIJAYA KUMARI AMMA,
D/O.GOURIKUTTY AMMA, T.C. 19/123, VATTAVILA
THIRUVANANTHAPURAM.**

**IMPLEADED AS ADDL.R5,R6 AND R7 AS PER ORDER IN IA. 9278/07
DT. 18.7.07.**

**BY ADV. SRI.L.MOHANAN, SC, KFC
SRI.R.S.KALKURA - R1 TO R3
SRI.D.KISHORE - R4
SRI.G.S.RAGHUNATH - R5 TO R7**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 09/08/2007, ALONG WITH WPC NO. 19045 OF 2007
THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

W.P.(C) NO.15125/2007

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE NO.KEC/BO/TVM/120331351/01/06 DT. 10.2.06 OF THE 1ST RESPONDENT.

EXT.P2:- COPY OF THE DEMAND NOTICE NO.PR.3 /07/139 DT. 27.4.07.

EXT.P3:- COPY OF THE DEMAND NOTICE NO.R.R. 3/07 DT. 27.4.07.

EXT.P4:- COPY OF THE INTERIM STAY ORDER IN WPC. 1285/07.

EXT.P5:- COPY OF THE LETTER NO.337/PAL/05 DT. 22.12.05 OF THE 4TH RESPONDENT.

EXT.P6:- COPY OF THE LETTER NO.KFC/BO/TVPM/120331351/347/06 DT.22.6.06 SENT BY THE 2ND RESPONDENT TO THE 4TH RESPONDENT.

EXT.P7:- COPY OF THE AFFIDAVIT BROUGHT TO THE PETITIONER BYA THEW 4TH RESPONDENT FOR STANDING AS CO-OBLIGANT.

EXT.P8:- COPY OF THE BALNK FORM OF THE BIO-DATA OF LOANEES.

E.XT.P9:- COPY OF THE SALE DEED DT 6.12.06 EXECUTED IN FAVOUR OF THE 6TH RESPONDENT.

EXT.P10:- COPY OF THE SALE DEED DT. 6.12.06 EXECUTED IN FAVOUR OF THE 7TH RESPONDENT.

/TRUE COPY/

P.A. TO JUDGE

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C.N.RAMACHANDRAN NAIR, J.

.....
W.P.(C) Nos.15125 & 19045 of 2007
.....

Dated this the 9th day of August, 2007.

JUDGMENT

These W.Ps. are filed by guarantors for the loan availed by the 4th respondent in W.P. 15125/2007 who is the 7th respondent in W.P. 19045/2007. The property belonging to the petitioners together which is 1 acre and 46 cents of land along with four other items of properties constituting collateral security were taken possession by KFC on 2.2.2006 on account of default committed by the principal debtor. All the items of properties were notified for sale through publication in newspapers made on 27th and 28th May, 2006. Tenders were opened on 7.6.2006. One acre 46 cents of property belonging to the petitioners together was purchased by respondents 5 to 7 in W.P. 15125/2007 who are respondents 4 to 6 in the other W.P. Even though the purchasers deposited the entire sale consideration of Rs.76,50,000/- in instalments by August 2006, none of the petitioners contested the sale. Even though the principal debtor filed a petition challenging the sale before the Lok Adalath and the Lok Adalath issued order on 14.10.2006 (produced as Ext.P2 in W.P. 19045/2007) granting time to the principal debtor to remit Rs.1 crore by 2.12.2006 as

condition for setting aside sale and release of property to the principal debtor or the guarantors/owners, they failed to deposit the amount and the said order got automatically vacated. Thereafter also the petitioners did not challenge the sale at any time until these W.Ps. are filed in May and June 2007 respectively. In between, after expiry of the time granted by the Lok Adalath to the principal debtor to deposit the amount for the purpose of setting aside sale, KFC executed sale deed on 6.12.2006 in favour of the purchasers. Challenge is against the sale, confirmation of the same and execution of sale deed in favour of the purchasers by KFC.

2. The first contention raised by petitioner in W.P.15125/2007 is that he has not even mortgaged his property. However, the KFC's case is that he has executed document along with principal debtor depositing title deeds of his properties and therefore, there is a valid mortgage created in respect of the same. The petitioner has questioned the genuineness of his signature in the document. I do not think any enquiry is required in the matter because the conduct of the petitioner himself proves that it is only a belated attempt made by the petitioner to challenge the sale and to retrieve the property only because of the escalation of the land value, of late. Moreover and as already stated, the petitioner has no explanation as to how the title deed of his property went into the hands of the financial institution

which is a Government of Kerala undertaking. The petitioner has not in fact filed any complaint against theft of title deed or the like. Besides this, physical possession of the property was taken over by KFC way back on 2.2.2006 and even when the property was notified for sale and was sold, petitioner did not choose to contest the same. On the other hand, the person aggrieved was the principal debtor and he filed case before the Lok Adalath and obtained conditional order against confirmation of sale. It is obvious that mortgage is created under arrangement with principal debtor and petitioner who acted as guarantor on terms acceptable to him and therefore, petitioner obviously did not have a grievance against taking over possession and sale of the property. Therefore, I do not find any bonafides in the claim of the petitioner for the property, more so, when the challenge is made by filing this W.P. on 14.5.2007 when the full sale consideration was paid by the purchasers in August 2006 and sale deed executed on 6.12.2006. The delay itself goes to establish want of bonafides on the part of the petitioners and the only inference possible is that petitioner wants to get the benefits of the unusual escalation of land value that has taken place currently. Counsel for the purchasers rightly submitted that purchasers have raised funds by sale of their other property and if they are deprived of the purchased property, they cannot acquire the sold property or purchase other property

for same consideration. I completely agree with this argument of the purchasers because even on equitable consideration the property cannot be restored to the original owners without adequately compensating the purchasers which in this case is rather impossible because petitioners or this court cannot restore the property sold by purchasers for acquiring the property involved in this case. The facts stated and inferences drawn in the case of petitioner in W.P. 15125/2007 squarely apply to the case of the petitioner in W.P. 19045/2007. The petitioner has filed W.P. 19045/2007 on 20.6.2007, whereas they were physically deprived of the property on 2.2.2006, sale made, full payment for the purchase made by purchasers in November 2006 and sale deed executed on 6.12.2006. The inordinate delay in challenging the sale itself is sufficient justification to dismiss the W.P. Moreover, as already stated, petitioners who are guarantors would have been protected by the principal debtor is evident from the contest made by the principal debtor alone against sale of petitioners' property. In the circumstances, I find no ground to interfere with the sale, confirmation of the same and execution of sale deed in favour of the purchasers. The W.Ps. are accordingly dismissed.

3. The petitioners have stated that further personal recovery proceedings against them are in progress. Having regard to the amount

recovered and the outstanding shown in the notice, I feel the matter requires to be considered by the Board of KFC. Fresh proceeding if any should be initiated or continued against petitioners only after KFC Board considers the matter.

C.N.RAMACHANDRAN NAIR
Judge

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